



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S MNRL-S FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages and cleaning?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on January 24, 2018 and the tenant vacated the rental unit on or about July 12 or 14, 2018. Rent in the amount of \$800.00 per month was payable on the 1<sup>st</sup> day of each month, and a partial amount was collected for the first month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a barn converted to living accommodation and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on July 3, 2018 the tenant sent to the landlord \$400.00 by e-transfer with a message stating that it would constitute rent for July if the landlord keeps the security deposit, and that the tenant would be moving out by the first of August. A copy of the e-transfer with the note has been provided for this hearing. The landlord didn't accept the e-transfer because he didn't agree to apply the security deposit to the rent for July. On July 5, 2018 the landlord attended the rental unit at 9:30 p.m. to provide the tenant with a flowchart and other documents from the Residential Tenancy Branch to illustrate that a tenant cannot apply the security deposit to rent unless the landlord agrees. Police were called, and in their presence the landlord gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided as evidence for this hearing. It is dated July 5, 2018 and contains an effective date of vacancy of July 15, 2018 for unpaid rent in the amount of \$800.00 that was due on July 1, 2018.

The tenant cancelled the e-transfer, and no rent has been paid for July, 2018. The landlord claims \$800.00.

The landlord has not re-rented and does not intend to, but given that the tenant did not give notice to end the tenancy prior to the 1<sup>st</sup> of the month, the landlord claims half a month's rent for August, 2018, and an order permitting the landlord to keep the security deposit in partial satisfaction.

The tenant has not provided the landlord with a forwarding address and has not served the landlord with an Application for Dispute Resolution.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy, however the landlord completed the

move-out portion of the report in the absence of the tenant on July 16, 2018. A copy of the report, with move-in and move-out markings has been provided as evidence for this hearing, as well as photographs which the landlord testified were taken during the move-out condition inspection.

The landlord also testified that the tenant didn't leave the rental unit clean, and the landlord claims \$150.00. The tenancy agreement specifies no smoking in the rental unit, and the landlord found ashes from cigarettes after the tenant moved out. The landlord washed all walls and the complete apartment.

The landlord's claims for damages are for damage to lockers inside the front door, damage to the front door, and bathroom door. The tenant's dad fixed the front door but not the gyprock. The landlord's usual contractor gave the landlord an estimate of \$620.50, which has been provided as evidence for this hearing however the landlord completed the work himself and claims \$35.00 per hour for 4 hours, or \$140.00. The contractor would charge \$70.00 per hour.

A shower head was missing after the tenant departed, and the landlord has provided an advertisement showing that it will cost \$12.99, which the landlord claims as against the tenant. Also missing is a bed frame, and another advertisement for \$107.99 has been provided which the landlord claims as against the tenant.

**The tenant** testified that she is new to British Columbia and the tenancy laws and didn't know that she could not apply a security deposit to rent. The notice to end the tenancy was given to the landlord late because the tenant was out of town for the long weekend. The tenant cancelled the e-transfer after the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant does not believe that she was given an opportunity to discuss the landlord's concerns at move-out, and the landlord did not schedule a date for the inspection. He only sent a text message asking if the tenant was going to participate.

The bed frame wasn't itemized on the move-in condition inspection report, and the tenant testified that she never took it. Further, the shower head was purchased by the tenant and she took it with her, leaving the landlord's shower head in a box under the sink.

The tenant wasn't able to thoroughly clean the rental unit because the landlord had served a notice giving the tenant 10 days to move out.

**The tenant's witness** testified that he was visiting the tenant on July 5, 2018 and the landlord loudly banged on the door at 9:30 p.m. The witness went to talk to the landlord at the landlord's residence and the landlord called police. The witness told police that the tenant would be willing to talk to the landlord during day, not at night and that the tenant was intimidated. The landlord had been aggressive with the witness previously.

### **Landlord's Submissions:**

The *Residential Tenancy Act* says rent is to be paid on the first of the month and a tenant must give a full month's notice to vacate. The landlord did not receive rent for July and the tenant's notice should be effective at the end of August. The landlord gave the tenant all of the information about that but the tenant did not adhere to any of it. Every opportunity was given and was thwarted. The tenant did not provide a forwarding address and didn't respond to the landlord's texts. The landlord seeks 1 ½ months rent, damages and the cost to replace the missing items. The shower head was not located.

### **Tenant's Submissions:**

The tenant made a mistake about the security deposit being retained by the landlord in lieu of rent and was unaware, and made an honest intent to pay rent. The landlord's approach was threatening and intimidating.

### Analysis

It's clear that the parties are both now aware that a tenant may not have a security deposit or pet damage deposit applied to rent unless both parties agree.

It is also clear that the tenant, by whatever method, has not paid rent for the month of July, 2018 and I find that the landlord has established the \$800.00 claim.

With respect to rent for August, the tenant agrees that the notice to end the tenancy sent to the landlord by an e-transfer message was sent later than the day rent is payable under the tenancy agreement. Any notice that the tenant could legally have given by July 3, 2018 could not have been effective earlier than August 31, 2018 given that rent is payable on the 1<sup>st</sup> day of each month. The landlord claims half a month's rent, and I find that to be reasonable, and I grant a monetary order in favour of the landlord for \$400.00.

I have reviewed the move-in/out condition inspection reports, which are not signed by either party at move-in or at move-out. The regulations go into great detail about how

the reports are completed, and the *Act* places the onus on the landlord to ensure they are completed in accordance with the regulations. If the landlord fails to do so, the landlord's right to make a claim for damages against the security deposit or pet damage deposit is extinguished. However, the landlord's right to make a claim for unpaid rent against the security deposit is not extinguished.

The *Act* also specifies that the reports are evidence of the condition of the rental unit at move-in and move-out. Since the report has not been signed by either party at move-in and the tenant has not agreed to the move-in report, I find that it cannot be relied upon as evidence.

With respect to cleaning, the tenant admitted that she did not finish the cleaning because she only had 10 days to move out since the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I don't accept that; the tenant could have paid the rent within 5 days and then the Notice would have had no effect. I find that the landlord has established the \$150.00 claim for cleaning.

With respect to damages, the onus is on the landlord to establish that the damage or loss exists and that it exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, the amount and what efforts the landlord made to mitigate. In this case, the tenant did not deny the damages, and I am satisfied that the landlord has established that he mitigated the amount by doing the work himself and has provided evidence of claiming a portion of what it would have cost if a contractor had completed the work. I am satisfied that the landlord has established the \$140.00 claim.

I also accept the landlord's claim for the missing shower head at \$12.99. However, I am not satisfied that the bed frame was part of the tenancy, or that the landlord has suffered that loss.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a \$400.00 security deposit, and I order that the landlord keep it in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,202.99 ( $\$800.00 + \$400.00 + \$150.00 + \$140.00 + \$12.99 + \$100.00 = \$1,602.99 - \$400.00 = \$1,202.99$ ).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,202.99.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2018

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Residential Tenancy Branch